

**MINUTES OF A MEETING
OF THE CORPORATIONS COMMITTEE
OF THE BUSINESS LAW SECTION
OF THE STATE BAR OF CALIFORNIA**

December 2, 2005

The Corporations Committee ("Corp Com") of the Business Law Section (the "BLS") of the State Bar of California held a regular meeting at The Westin San Francisco Airport Hotel in Millbrae, California on December 2, 2005. Attendance was as follows:

MEMBERS PRESENT:

Nelson D. Crandall
Clint Davis*
Christopher A. Delfino
Bruce R. Deming
Matthew R. Gemello
Steven R. Harmon
Peter Heinecke
Nina L. Hong
Victor Hsu
Michael A. Occhiolini
William R. Sawyers
David M. Serepca
Lemoine Skinner, III
Jennifer Lynn Sostrin*
Steven B. Stokdyk
James J. Thompson*
Suzanne L. Weakley
Brian M. Wong
Russell J. Wood

MEMBERS ABSENT:

Curt C. Barwick
Brian A. Lebrecht
Stewart Laughlin McDowell
Deborah J. Ruosch
Bertha Cortes Willner

LIAISONS AND GUESTS PRESENT:

Kevin Kelso, Executive Committee

*Via telephone

The order of presentation of the items below does not necessarily reflect the order of discussion of the items at the meeting. The Committee did not take up topics that are not described in these minutes.

I. ADMINISTRATIVE MATTERS

1. Opening Remarks and Announcements: Co-Chair Gemello called the meeting to order at 9:30 a.m. Mr. Gemello thanked the Corp Com members in attendance and informed them that a quorum was present.
2. Approval of Minutes: The Corp Com members present approved the minutes for the November 2005 meeting in the form circulated (with minor corrections).

II. AGENCY AND LIAISONS' REPORTS

1. Corporate Law Departments: Steve Harmon reported that the Corporate Law Departments Committee ("CLDC") did not meet in October, but did meet in November. Mr. Harmon advised that he has reached out to the CLDC leadership for opportunities to work together. The CDLC wants to increase its constituency by focusing on projects to add value to BLS members who are in corporate law departments. The CDLC leadership indicated that they would like to joint venture a continuing legal education teleconference with Corp Com in the future on a subject of mutual interest. Mr. Harmon emphasized that the program would have to be beneficial both to attorneys in corporate law departments and to attorneys in private practice. Suzanne Weakley suggested that Corp Com send a notice of the February 21, 2006 telecast concerning shareholder voting to the CLDC constituency list.
2. Financial Institutions Committee: Michael Occhiolini reported that the Financial Institutions Committee reviewed Corp Com's proposal for authorizing pre-dispute contractual waivers of the right to a jury trial, and endorsed it after a considered discussion of the proposed omission of consumer transactions from the scope of the waiver.
3. Nonprofit and Unincorporated Organizations Committee: Bill Sawyers reported on most recent meeting of the Nonprofit Unincorporated Organizations Committee ("NUOC"). NUOC is considering its next significant undertaking.
4. Uniform Commercial Code Committee: Nina Hong reported that the UCC Committee has reviewed and commented on proposed forms of Deposit Account Control Agreements promulgated by the Joint Task Force on Deposit Account Control Agreements of the Uniform Commercial Code Committee of the Business Law Section of the American Bar Association. The UCC Committee has also formed a subcommittee to consider the question of pre-dispute contractual waivers of the right to a jury trial, and has reviewed Corp Com's proposal.
5. Executive Committee: Kevin Kelso reported that the last Executive Committee ("Ex Com") meeting spent a lot of time on the question of pre-dispute contractual waivers of the right to a jury trial. He also said that Ex Com is focusing on outreach and increasing membership in the Business Law Section.

III. SUBCOMMITTEE REPORTS

1. Legislation:

a. Jury Waivers: Chris Delfino led a discussion of the status of Corp Com's Affirmative Legislative Proposal ("ALP") regarding jury waivers. Corp Com has forwarded the proposal to the Financial Institutions and UCC Committees, and has received several comments. The main concern of these Committees was to avoid creating a new definition of "consumer," as this could conflict with other existing definitions of "consumer." Mr. Delfino reported that the Executive Committee has created a subcommittee to work on the proposal with Corp Com. Ex Com will ask the Board of Governors to authorize Larry Doyle to obtain a sponsor for the proposal after the Financial Institutions and UCC Committees have forwarded their endorsements to Ex Com. An urgency request has added to the ALP. The retroactivity provision was also moved to the codified section of the bill. Another change was to make the waiver valid against a person who makes the waiver rather than to require the beneficiary of the waiver to sign it. There were several drafting suggestions from the committee during the meeting. Points discussed were whether the waiver required consideration; the scope of the waiver; the definition of consumer; the time at which the waiver may be made; and strategic and tactical considerations. There was a strong consensus that (a) the language should use an existing definition of "consumer"; (b) the phrase "in writing" should clearly modify every variation of "contract"; and (c) the waiver should apply only to waivers before the commencement of a civil action (since the law already permits waiver after the commencement of a civil action). Mr. Delfino asked Corp Com to authorize the July Waivers subcommittee to work with the appropriate subcommittees of the Financial Institutions, UCC, and Executive Committees to finalize the language of the proposal. The authorization was granted by consensus without a formal vote. The membership was asked to get its final comments into Mr. Delfino or another subcommittee member on or before December 9, 2005.

b. Corporate Disclosure Act: Bruce Deming led a discussion of the ALP to repeal the supplemental disclosure portions of the Corporate Disclosure Act. There was a discussion of the definition of public corporation and a suggestion that the Secretary of State forms require the registrant to provide a Central Index Key ("CIK") number only if the registrant has one. It was decided by consensus that Matt Gemello will follow up with the Department of Corporations and the Secretary of State concerning these proposals, that Corp Com members should forward any comments to Steve Stokdyk and Bruce Deming on or before December 9, 2005, and that the subcommittee is authorized to work with Ex Com to finalize the ALP.

c. Calendar: The calendar for legislative proposals is to identify likely legislative proposals by January / February and have affirmative legislative proposals by June 1st. Mr. Delfino encouraged the Committee to e-mail him

ahead of time with ideas for possible legislative proposals so that they can be put on the agenda for the December meeting.

2. Communications/Website: David Serepca reported that the instance of e-bulletins to the BLS constituency is up 300% from last year. Mr. Serepca requested suggestions for additional e-bulletin comments.
3. Education/Publications: Suzanne Weakley that a telecast presentation on shareholder voting is scheduled for February 21, 2006. Ms. Weakley solicited ideas for other conferences in this format. Chris Delfino requested suggestions for presentations to be made at the 2006 Annual Meeting of the State Bar in October 2006.

IV. ONGOING PROJECTS

1. National Venture Capital Association Model Forms: Lemoine Skinner updated the Committee on the National Venture Capital Association Model Forms project.
2. Close Corporation Model Act adoptions: David Serepca reported on the results of the e-bulletin survey sent out to the Committee's constituency base. The results indicate that some practitioners are forming statutory close corporations for their clients.
3. ABA Presidential Task Force on the Attorney-Client Privilege: Clint Davis and Russell Wood led a discussion of the ABA Presidential Task Force on the Attorney-Client Privilege. The Task Force is particularly concerned about requests from the Department of Justice, the Securities and Exchange Commission, and other governmental bodies that companies "voluntarily" waive the attorney-client privilege. The ABA House of Delegates has formally opposed "the routine practice by government officials of seeking to obtain a waiver of the attorney-client privilege or work product doctrine through the granting or denial of any benefit or advantage," such as including such a waiver among the factors to be considered in sentencing guidelines. There is an effort to collect survey and anecdotal information about the frequency of the practice. There is a plan to produce a report on the attitudes of different governmental agencies on this issue and also a plan to produce a report on changing practices of auditors in seeking financial information. The sense of the Task Force is that government is generally denying that it routinely requests such waivers, which makes it hard to understand and evaluate the effects of this practice. A suggestion was made to reach out to the Litigation Section of the BLS on this issue.
4. 2005 Corporate Law Developments: Clint Davis reported that he would circulate a draft of an article on recent developments for consideration at the next meeting.
5. Venture Capital Opinion Project: Peter Heinecke reported that the Venture Capital Opinions Subcommittee of the Opinions Committee has invited interested members of Corp Com to work with it on its proposed project.

V. NEW BUSINESS

1. Litigation Subcommittee Proposal: SS raised the question of whether the Corporations Committee should have a litigation subcommittee. The idea would be to monitor ongoing legislation. Mr. Gemello asked the Corp Com members to consult with their litigators about what kinds of resources are available for such a project.

The meeting adjourned at approximately 12:15 p.m.

A handwritten signature in black ink, appearing to read "Nelson D. Crandall", written over a horizontal line.

Nelson D. Crandall, secretary of the meeting